Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF U S WEST, INC.

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SUMMARY

U S WEST agrees with the Commission's tentative conclusions regarding the availability and administration of telephone numbers, but urges the Commission to move quickly in selecting a new NANP administrator.

U S WEST likewise agrees that Section 251(b) requires all LECs, incumbent or new, to provide dialing parity with respect to their telephone exchange services. Dialing parity is available today, given that all facilities-based providers of local exchange services can acquire their own central office code(s).

An obligation to provide dialing parity in connection with telephone toll services (including international) is triggered only if the LEC in question has an obligation to provide equal access. The new Act does not impose an equal access obligation for telephone toll services, except on those incumbent LECs subject to Section 251(g) of the new Act (and further delineated in Section 3(f) of the Act).

With respect to operator and directory services, given that both types of services find a host of non-LEC providers in the market, no LEC should be mandated to provide them. A competitive market requires a range of choices with respect to how such services are provided.

As to directory assistance listings, per se, to the extent that LECs are willing to provide other LECs with primary listing information, at no charge, for directory assistance services, LECs should be required to include those free-listings in their directory assistance offerings.

On the issue of technical disclosure, U S WEST submits that the existing Computer Rules provide a model for disclosure which should guide technical dissemination rules under the Act. However, the six-month period imposed between disclosure of an interface and its deployment should not be adopted as part of the new rules.

In implementing the Act's requirements that LECs provide access to poles, conduits, and rights-of-way, the Commission should do no more than adopt a broad set of minimum standards. These standards should be sufficiently flexible to accommodate a wide variety of privately negotiated joint-use agreements and state laws. The Act contemplates that utilities and telecommunications carriers will continue to enter into joint-use agreements, and the Commission should take pains to avoid interfering with the negotiation process.

As to the Commission's specific inquires associated with the provision of LEC poles, conduits, and rights-of-way, U S WEST's positions can be summarized as follows: "first come, first served" is a reasonable means of satisfying the requirement for nondiscriminatory access; capacity measurements should include a minimum reserve requirement; a 60-day notice should be required prior to any rearrangement or modification of poles, conduits, and rights-of-way; and cost apportionment rules are not needed.

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U S WEST, Inc. ("U S WEST") hereby files its comments on the second phase of the Federal Communications Commission's ("Commission") interconnection docket.[1]

I. NUMBER ADMINISTRATION
Notice Section II.E.

Much of the groundwork for the availability and administration of telephone numbers has already been laid. U S WEST agrees with the Commission's tentative conclusions in the Notice that its NANP Order[2] satisfies the requirement of the

[1] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182, rel. Apr. 19, 1996 ("Notice"). These comments deal with the Dialing Parity, Number Administration, Public Notice of Technical Changes and Access to Rights of Way issues.

[2] In the Matter of Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, FCC 95-283, rel. July 13, 1995 ("NANP Order") recon. pending.

Telecommunications Act of 1996[3] that the Commission designate an impartial numbering administrator;[4] that the Commission should retain its authority to set policy with respect to all facets of numbering administration;[5] that area code implementation ought to be delegated to the states;[6] that the Ameritech Order[7] should continue to provide guidance to the states regarding how new area codes can be lawfully implemented;[8] and that the new Act vests in the Commission exclusive jurisdiction over numbering matters in the United States, although it may delegate some or all of that power to the state commissions.[9]

The Commission expresses concern over what actions might be appropriate if a state, in implementing area code relief, acts in violation of the Commission's guidelines.[10] U S WEST submits that there is no need to re-assess the jurisdictional balance between the Commission and the states in this area because, as is observed correctly in the Notice, the Act gives the Commission exclusive jurisdiction over numbering issues and the Commission can always enter a preemption order. As to timing, while timing of review of a potentially inconsistent state order is important,

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act").

[4] Notice ¶¶ 252, 257.

[5] Id. ¶ 254.

[6] Id. ¶ 256.

[7] In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995) ("Ameritech Order") recon. pending.

[8] Notice ¶ 256.

[9] Id. ¶ 257.

[10] Id.

the experience of the Ameritech Order demonstrates that the Commission is capable of intervening in a timely manner. Moreover, it is anticipated that the new North American Numbering Plan ("NANP") administrator will keep the Commission apprised of area codes facing exhaustion and requiring code relief.

Concerning the role of Bell Communications Research ("Bellcore"),[11] U S WEST agrees that the Commission should reaffirm that Bellcore and the current central office code administrators (such as U S WEST Communications, Inc. ("USWC")) may continue to perform number administration. However, U S WEST urges the Commission to move quickly in selecting a new NANP administrator. USWC, which administers numbers in 14 states, indicated several years ago that it wished to be relieved of its number administration responsibility and is willing to be the first number administrator to transfer these responsibilities to the new NANP administrator. U S WEST is also willing to work with the new NANP administrator in developing new processes and assisting in the transition process.

Finally, the Commission seeks comment on whether additional number administration responsibilities should be delegated to the states or to other entities.[12] In addition to approving area code relief plans, states have historically resolved disputes over the assignment of central office codes. While the number of such disputes has been small (at least within U S WEST's region), U S WEST recommends that states continue to maintain control over the central office code

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[11] Id. ¶ 258.

[12] Id.

assignment review process (subject, of course, to the Commission's ultimate authority).

II. DIALING PARITY
Notice Section II.C.3.

The Notice poses a number of questions concerning the Act's obligations, applicable to all LECs, to provide:

> . . . dialing parity to competing providers of telephone exchange service and telephone toll service, and . . . to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.[13]

Section 251(b)(3) requires all LECs to provide dialing parity with respect to all telephone exchange services. Dialing parity is available today, given that all facilities-based providers of local telephone exchange carriers can acquire their own central office code(s).

An obligation to provide dialing parity in connection with telephone toll services (including international) is triggered only if the LEC in question has an obligation to provide equal access. The new Act does not impose an equal access obligation for telephone toll services, except on those incumbent LECs subject to Section 251(g) of the new Act (and further delineated in Section 3(f) of the Act). Consequently, only this subset of incumbent LECs (i.e., the Bell Operating

[13] Act, 110 Stat. at 62 § 251(b)(3).

Companies ("BOC") and GTE) has an obligation to provide dialing parity with respect to telephone toll services.

U S WEST agrees with the Commission that presubscription represents the most feasible method of achieving dialing parity where there exists an obligation to provide dialing parity.[14] As noted above, LECs have an obligation to provide dialing parity only in connection with their telephone exchange services and not their telephone toll services -- except for those LECs subject to Section 251(g) (which include the Bell Operating Companies.

The Commission should not require non-BOC and non-GTE LECs to provide equal access. In a competitive environment, a competitive LEC will provide equal access if there exists a market demand for it. However, all LECs should be required to provide their customers with a "presubscription override" capability -- that is, the ability to reach a toll carrier of choice for any given call by dialing 10XXX or 101XXXX.

Equal access for BOC customers' interLATA toll traffic has been available for more than a decade. In connection with equal access for intraLATA toll traffic, USWC's embedded switches are capable of supporting only the "2-PIC" presubscription methodology,[15] whereby a customer can choose any carrier to handle his/her intraLATA toll traffic -- that is, USWC, the customer's presubscribed interexchange carrier ("IXC"), or another IXC.

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[14] Notice ¶ 207.

[15] Id. ¶ 210.

To USWC's knowledge, its switch vendors have not developed a "3-PIC" presubscription methodology, whereby a third presubscribed carrier can be used for yet another type of toll traffic (e.g., international). The Commission should not prescribe use of a presubscription methodology other than the "2-PIC" plan without determining first that there is a market demand for this capability, and that the benefits of the capability exceed the costs to deploy it.

U S WEST also agrees that Section 251(b)(3) of the Act requires every LEC to permit its telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, regardless of the identity of the LEC serving the calling or called party. As noted above, such local dialing parity is assured by the fact that every facilities-based provider of telephone exchange service can acquire its own central office code(s).

Questions may arise when the local calling areas of two competing LECs do not match. To the extent such dialing parity disputes arise, U S WEST believes that the states are in a better position, at least in the first instance, to resolve any disputes because they are familiar with the calling areas and calling patterns of customers within their jurisdictions.

Concerning the schedule for implementation of dialing parity,[16] as discussed above, dialing parity already exists for telephone exchange services. An obligation for dialing parity with respect to toll services applies only to those LECs (BOCs and GTE companies) with an equal access obligation. For these companies, dialing

[16] Id. ¶ 212.

parity already exists for interLATA toll traffic. Implementation of presubscription/dialing parity in connection with intraLATA toll traffic should be left, in the first instance, with each impacted state.

The Notice seeks comment on whether balloting or additional customer education efforts should be imposed when intraLATA presubscription is introduced in a given state.[17] IntraLATA presubscription has been introduced in two states in which U S WEST has a presence: Arizona and Minnesota. The commissions in each state rejected the argument that the public interest would be served by requiring balloting as part of the conversion to intraLATA equal access.[18] As the Minnesota Commission held in adopting the recommendation of an industry committee that intraLATA presubscription balloting should not be used (unless combined with interLATA balloting for an office converting to equal access for the first time):

> The Commission agrees that this method will help reduce customer confusion. It is also the most cost effective method of implementing intraLATA presubscription. The Commission also agrees with the [industry] Committee that sufficient market incentives exist to encourage IXC participation in intraLATA presubscription without a second balloting process.[19]

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[17] Id. ¶ 213.

[18] See Investigation into IntraLATA Equal Access and Presubscription, Docket No. P-999/CI-87-697 (Minnesota, July 21, 1994)("Minnesota Order"); Notice of Proposed Rulemaking Regarding Competitive Telecommunication Services, Docket No. R-0000-94-424 (Arizona, June 23, 1995).

[19] Minnesota Order at 9.

The subsequent experience in Arizona and Minnesota has confirmed that balloting is not necessary to facilitate development of a competitive market in the provision of intraLATA toll services.

The Notice also seeks information on the non-discrimination requirements of Section 253(b)(3) of the Act.[20] With the industry's development of central office code assignment and area code relief guidelines, no additional Commission action is necessary to meet the requirements of Section 251(b)(3). However, the Commission should move swiftly in appointing a new NANP administrator.

With respect to any LEC obligation to provide operator services,[21] it bears remembering that the overarching purpose of the 1996 Act was to introduce and expand competition in all segments of the telecommunications industry and in the provision of telephone exchange services in particular. In a competitive local exchange market, some LECs will invariably decide to be "full service" providers and offer such capabilities as "0" and "0+" dialing. Other LECs may decide to offer their customers the alternative billing arrangements made possible by "0+" dialing, but not offer a "0" service (or *vice versa*). And still other LECs may decide to offer a "no frills" service with no "0" or "0+" capabilities -- much like some IXCs in the interexchange market.

The point is, in a competitive environment, regulatory agencies should not mandate all carriers provide certain adjunct, non-essential services, including "0"

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[20] Notice ¶ 215.

[21] Id. ¶ 216.

and "0+" services. Nor should regulatory agencies dictate the manner in which adjunct, non-essential services are accessed (for those carriers deciding to offer such capabilities). These decisions are best made by each carrier, based upon its perception of market demand. If a LEC decides to offer the public a cheaper "no frills" service, the public should have the opportunity to order such a service.

Under no circumstance should any LEC be required to offer its operator services to competing LECs (except to resellers of a LEC's service when it is not technically feasible for the reseller to access and use the operator services of another operator services provider). The operator services market is fully competitive today. U S WEST estimates that there are more than 400 firms within its 14-state region which provide operator services to themselves or others. Forcing anyone, including a LEC, to offer a given service to a competitor is flatly inconsistent with a competitive marketplace.[22]

Similar considerations apply to directory services.[23] In a competitive environment, the decisions to provide directory assistance services, how such

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[22] However, U S WEST believes that public interest considerations dictate that all telecommunications providers serving end user customers -- LECs and non-LECs -- should be required to provide 911 emergency calling to all their customers.

[23] Notice ¶ 217. U S WEST uses the term "directory services" to include directory assistance operators, directory assistance databases, and directory publishing. The Commission's inquiry is addressed to the former two items, not to the latter. However, directory publishing is a vehicle by which entities provide calling information to end users, similar to that provided by directory assistance operators. And, the "listings" that populate the directory assistance databases are similar to listings that are provided to directory publishers. Thus, some discussion of directories and directory publishers is warranted in response to the Commission's inquiry.

services are offered, and who provides them should be left with each individual carrier. In light of the growing competitive provisioning of directory assistance offerings, a LEC interested in providing directory services has many alternatives, including providing the service itself.

If a LEC chooses to provide directory assistance services (either directly to its own end users or indirectly by contracting the services to another directory assistance provider), it must be obliged to accept at least the primary listings of other LECs in the same local exchange area, if those other LECs offer the primary listings at no charge.[24] Competitive parity dictates that directory assistance information be made available, for purposes of directory assistance service only, to others on the same terms and conditions that they are made available to oneself. Further, the information exchanged should be in a widely accepted industry standard or mutually agreed upon format. In all cases, the LEC providing the listings for directory assistance can include reasonable use restrictions on the information provided.[25]

A similar model should be employed with respect to directory publishing. There can be no dispute that directory publishing is a highly competitive market. If a LEC publishes a white pages directory, it should accept the primary listings of all

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[24] If a LEC chooses to sell its listings to directory assistance providers, then a LEC providing directory assistance must be allowed to make a business decision as to the value of those listings and must not be required to purchase them.

[25] For example, one reasonable use restriction would be that directory assistance information (i.e., listings) be used only for directory assistance purposes and not for purposes of creating or publishing directories. There are other LEC offerings which provide listings for purposes of publishing directories.

other LECs' end users within the same local exchange area, in those circumstances where the LECs provide them at no charge.[26]

Finally, comment is sought on whether rules should be adopted in connection with the Act's prohibition against "unreasonable dialing delays."[27] As used in Section 251(b)(3), the phrase "unreasonable dialing delay" makes sense only in connection with operator and directory assistance services. There is no need for the Commission to concern itself with attempting to define, "unreasonable dialing delays." To the extent competing LECs decide to provide operator and/or directory services to each other, they can negotiate dialing delays as part of their business contract.

III. NOTICE OF TECHNICAL CHANGES
Notice Section II.B.4.

The Act (Section 251(c)(5)) requires that incumbent LECs provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that LEC's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

The Commission seeks comment on how to implement this section of the Act. The Notice tentatively concludes that the phrase "'information necessary for transmission and routing"' should be defined as "any information in the LEC's

[26] No LEC should be required to purchase a listing to be included in a directory or be required to provide its publishing lists to any other LEC at no cost.

[27] Notice ¶ 218.

possession that affects interconnectors' performance or ability to provide services;" that the word "'services' should include both telecommunications services and information services," and that the term "interoperability" includes "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.[28] These definitions appear reasonable and U S WEST supports this part of the Notice.

The Notice, observing that actual notice of network changes covered by this Section is key to proper implementation, seeks comment on how and when such notice should be effectuated.[29] U S WEST submits that the Commission's (and U S WEST's) experience with network disclosure under the Computer Rules[30] has proven satisfactory and should provide the basis for disclosure rules under the statute.

In terms of what should be disclosed, the content of current network disclosures pursuant to the Computer Rules would seem to satisfy the requirements

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[28] Id. ¶ 189 (footnote reference omitted).

[29] Id. ¶¶ 190-192.

[30] See In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Memorandum Opinion and Order, 84 FCC 2d 50, 82-83 ¶ 95 (1980); In the Matter of Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd. 143, 150-51 ¶¶ 47-54 and n.132 (1987), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd. 22, 23-24 ¶¶ 12-14 (1987); In the Matter of Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase I, Report and Order, 958 FCC 2d 1080-86 ¶¶ 246-55 (1986), Phase II, Report and Order, 2 FCC Rcd. 3072, 3087-88 ¶¶ 107-12, 3091-93 ¶¶ 134-40 (1987), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd. 1150, 1164-65 ¶¶ 116-20 (1988). See also 47 CFR § 68.110.

of the Act. Both the Act and the Computer Rules reflect the requirement to provide technical information necessary to promise full service interoperability. Thus, U S WEST sees no reason to depart from these existing rules. As experience is gained with technical dissemination, carriers will have the opportunity to determine if more detailed rules concerning the contents of disclosure may be appropriate.

Disclosure occurs when public notice is made for a new basic network interface or a change to an existing interface which impacts the interconnection or operability of customer premises equipment or a service which relies on the interface to be deployed. In this context, the existing "make/buy" rules (becoming operative once the LEC has reached a firm business decision to deploy an interface) provide a meaningful disclosure point.

However, today's network disclosure requirements also include a minimum six-month period between disclosure and implementation of a new interface. This six-month period should not be included in the statutory disclosure rules because it can needlessly delay service deployment. Proper disclosure at the "make/buy" point should suffice to provide proper industry notice under the Act.

No additional notice should be required for deployment of standard interfaces and services. In other words, once USWC has announced its intention to deploy a particular interface or technology, there is no reason why the statutory notice provisions should apply further (although carriers will presumably wish to keep their customers advised of service availability on a timely basis.)

The current rules give LECs considerable flexibility to determine how best to disseminate notice of new interfaces. The types of notice which USWC currently gives of network changes include:

- Network Disclosure News references technical publications which outline the physical, electrical, and message content/protocol of each new or changed interface. This document is distributed to approximately 2,000 carriers, vendors, enhanced service providers, etc.
- Internet WEB site (planned for this summer, the WEB site will include a current index of all Network Disclosures released to date).[31]
- Trade publications.

U S WEST has found the foregoing disclosure mechanisms to be very successful. LECs should continue to have flexibility in determining how best to disseminate their network information. The addition of a network disclosure WEB site appears extremely promising and U S WEST will share with the Commission more information on this disclosure method once it becomes available.

IV. ACCESS TO POLES, CONDUITS, AND RIGHTS-OF-WAY Notice Section II.C.4.

Section 251(b)(4) of the Act imposes on all LECs a duty to provide competing telecommunications carriers access to poles, conduits, and rights-of-way to

[31] The Notice requests comment on industry forums. U S WEST submits that the Industry Carrier Compatibility Forum and Network Operation Forum should not be considered to be viable disclosure vehicles. These forums deal with technical interconnection and operation issues, not dissemination of company-specific interconnection information. They do not have the resources to deal with the volume of information contemplated in the Act for disclosure.

competing telecommunications carriers on rates, terms, and conditions that are consistent with Section 224 of the Act. In this proceeding the Commission requests comment on: 1) the meaning of the term "nondiscriminatory" access;[32] 2) specific standards for determining whether "insufficient capacity" exists;[33] 3) notice requirements associated with modifications/rearrangements to poles, conduits, and rights-of-way;[34] and 4) whether rules should be established to determine the "proportionate share" of rearrangement costs to be assigned to the different entities.

Prior to providing specific responses to the Commission's inquiries, U S WEST points out that any attempt by the Commission to articulate and implement detailed national standards on use of poles, conduits, and rights-of-way would be futile. Nothing is more "local" in the provision of local exchange service than these items.[35] At most, the Commission should adopt a broad set of minimum standards which would accommodate a wide variety of individual state laws and circumstances. Any such minimum standards should also be flexible enough to allow utilities and carriers to enter into private contractual agreements. The Act contemplates that utilities and telecommunications carriers will continue to enter into broad joint-use agreements for the use of poles, conduits, and rights-of-way, as has been the case under the 1978 Pole Attachment Act.[36] The Commission should

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[32] Notice ¶ 221.

[33] Id. ¶ 223.

[34] Id. ¶ 225.

[35] It is unlikely that any two state right-of-way laws are identical, let alone the manner in which these statutes may be applied in practice.

[36] See 47 USC § 224; Act, 110 Stat. at 149-51 (§ 703).

do nothing in this or later proceedings to infringe on privately negotiated agreements between utilities and telecommunications carriers or to treat these items as if they were the equivalent of tariffed telecommunications services, which they are not.

Finally, any discussion of LEC requirements to provide access to their poles, conduits, and easements would be incomplete without explicit recognition of the fact that such mandatory occupation of LEC facilities constitutes the taking of private LEC property. As such, both the Commission and respective state regulatory agencies must ensure that LECs receive just compensation for their taken property.

A. "First Come, First Served" Is A Reasonable Means Of Satisfying The Statute's Requirement For Nondiscriminatory Access Notice Section II.C.4.

U S WEST believes that the most appropriate way of satisfying the requirement for nondiscriminatory access to poles, conduits, and rights-of-way is on a "first come, first served" basis. This approach should apply equally to all providers, including the LEC controlling poles, conduits, and rights-of-way. The only limitation to this general rule is that the requesting carriers should not be allowed to use pole and conduit space in an inefficient or disruptive manner.[37]

[37] For example, the controlling LEC should be allowed to adopt reasonable minimum purchase requirements so that a requesting carrier is not allowed to select individual poles or very short spans of conduit runs which would effectively "strand" investment in the remainder of conduit runs or other poles. Furthermore, the controlling LEC should be permitted to impose reasonable conditions on the use of poles, conduits, and rights-of-way so that the services of other carriers are not disrupted.

The only other caveat -- and it is a major one -- is that a controlling LEC cannot grant what it does not have. This issue arises within the context of both private and public rights-of-way. Some private easements and virtually all public easements are restricted to a given carrier. If another carrier wants access to poles, conduits, or rights-of-way, the carrier must approach the grantor or licensor directly to obtain necessary authority to place its facilities.[38] The Act cannot be read to require controlling LECs to acquire necessary grants of authority on behalf of other carriers.

As mentioned above, any LEC provision of poles, conduits, or rights-of-way to other carriers requires that the providing LEC be fairly compensated. The Act's requirement that LECs allow access to poles, conduits, and rights-of-way is a physical per se taking of LEC property.[39] As such, affected LECs must be permitted to recover either: a) the full value of the taken property from other carriers; or b) this value from the other carriers and the sovereign.

Similarly, any requirements that LECs place poles, construct conduit, or acquire rights-of-way for other carriers also would constitute takings and have constitutional implications.[40] In such a case, the Commission (or state regulatory

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[38] Telecommunications carriers using public rights-of-way have little or no authority to make these rights-of-way available to other carriers. The right to use the public right-of-way is normally conveyed through specific permits, licenses, or easements which are associated with the placement of a given type of facility by a particular party. Thus, even carriers wishing to access another carrier's existing conduit must first obtain permission from the appropriate government agency.

[39] See Comments of U S WEST, Inc. filed herein May 16, 1996, at 29-32 for an in-depth discussion of this issue.

[40] For a further discussion of this issue see id. at 32-35.

agency) must ensure that the LEC is compensated fully and receives fair market value for such construction or acquisition.

B. Any Measures Of Capacity Should Include A Minimum Reserve Requirement
Notice Section II.C.4.

LECs and other utilities controlling poles, conduits, and rights-of-way virtually always incorporate a reserve requirement in constructing new facilities, including poles and conduit. This reserve requirement is usually based on three-to-five-year growth projections.[41] While the utility may find it economic to construct additional facilities beyond this reserve requirement, a minimum amount of reserve capacity is normally included in any construction job. When a certain threshold capacity level is reached (e.g., normally 85% of usable capacity for U S WEST conduit), planning for additional construction jobs is initiated.

LECs should only be required to make poles, conduits, and rights-of-way available for the use of other carriers up to this "construction trigger point." Any other measure would jeopardize the service of all carriers using any particular set of poles, conduits, and rights-of-way. As such, it would be contrary to the public interest to require LECs to provide access to poles, conduits, and rights-of-way beyond some minimum reserve requirement. U S WEST suggests that for purposes of the Act, the Commission should find that "insufficient capacity" exists beyond the

[41] In the future, it is anticipated that these growth projections will include the projections of all carriers, not just controlling utilities.

85% capacity level and should not require LECs to provide access to new carriers beyond that level (or to existing carriers that have declined to provide valid forecasts or reserve capacity).

C. A 60-Day Notice Requirement Is Reasonable Notice Section II.C.4.

The Commission seeks comment on whether it should establish requirements on the manner and timing of notice so that other carriers using poles, conduits, or rights-of-way have a "reasonable opportunity" to add or modify their attachments/facilities.[42] Over the years, utilities and carriers have reached mutually agreeable notice requirements that have met the needs of the participating parties. Normally, these requirements are found in the joint-use agreements that the different utilities have negotiated. No purpose would be served by the Commission establishing detailed notice requirements.

At most, the Commission should adopt a minimum notice requirement and no more. U S WEST believes that 60 days is a reasonable minimum notice requirement. The Act contemplates and it is anticipated that utilities and carriers will continue to employ privately negotiated joint-use agreements. If the parties to these agreements determine that more detailed notice provisions are required, they can incorporate these provisions in their respective joint-use agreements.

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[42] Notice ¶ 225.

D. The Act's Provisions On Apportioning Costs Are Straight-Forward And No Further Policies Are Required Notice Section II.C.4.

Section 224(h) requires that an entity adding to or modifying its attachments (i.e., once a utility has given notice of a rearrangement) is required to "bear a proportionate share of the costs incurred" to make the pole, conduit, or right-of-way accessible.[43] The Commission asks if it should establish rules to determine the "proportionate share" of costs in such instances. The answer is a resounding "no."

It would be all but impossible for the Commission to formulate rules which would be broad enough to incorporate all the special circumstances that might affect utilities and carriers across the country. This issue is best addressed in the general joint-use agreements negotiated by the parties that will continue to cover access to most poles and conduit. Any party that believes it has been unfairly treated or injured always has the option of seeking relief under the Act's complaint procedures.[44] Additional Commission rules are not needed on the apportionment of costs.

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[43] 47 USC § 224(h).

[44] In order to minimize delays in resolving disputes in joint-use agreements, U S WEST suggests that parties be required to incorporate alternative dispute resolution language in such agreements. This would allow any party seeking redress to do so without filing a formal complaint.

V. CONCLUSION

The aforementioned comments on number administration, dialing parity, notice of technical changes and access to poles, conduits, and rights-of-way represent equitable solutions in which competition will flourish in the telecommunications marketplace.

Respectfully submitted,

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